

## § 381.11

has been canceled due to failure to remit a required installment payment.)

(b) An operator of a Special Event Tour may accept a booking and payment from an individual for whom the operator does not have an event ticket in hand or under contract if that individual agrees in writing that he or she understands that no event ticket has been reserved for him or her. This agreement shall specify whether the person has agreed to participate in the tour without an event ticket and/or the operator has agreed to attempt to acquire an event ticket for this person. If the two parties agree that the operator will attempt to acquire an event ticket, the agreement shall specify any penalties that will apply if the individual later cancels because an event ticket did not become available. If the operator notifies this person that an event ticket has become available, that person shall enjoy all the other protections of this part from that time.

### § 381.11 Refunds.

If promised admission to the primary event for which a Special Event Tour was organized is not furnished by the tour operator, at the tour price agreed to before departure (including any increases that the participant has accepted pursuant to § 381.13(a)), the operator must provide each tour participant affected in this way a refund of the total tour price. This refund is to be provided within 14 calendar days after the scheduled return date of the tour.

### § 381.13 Price increases.

(a) Should the tour operator increase a participant's tour price by more than 10 percent (aggregate of all increases to that participant), that participant shall have the option of canceling his or her participation in the tour and receiving a full refund within 14 days after the cancellation.

(b) The tour operator shall not increase the tour price to any participant less than ten days before departure.

## 14 CFR Ch. II (1–1–98 Edition)

### PART 382—NONDISCRIMINATION ON THE BASIS OF DISABILITY IN AIR TRAVEL

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#### Subpart A—General Provisions

##### § 382.1 Purpose.

The purpose of this part is to implement the Air Carrier Access Act of 1986

(49 U.S.C. 1374(c)), which provides that no air carrier may discriminate against any otherwise qualified individual with a disability, by reason of such disability, in the provision of air transportation.

### § 382.3 Applicability.

(a) Except as provided in this section, this part applies to all air carriers providing air transportation.

(b) Sections 382.21–382.63 do not apply to indirect air carriers.

(c) This part does not apply to foreign air carriers or to airport facilities outside the United States, its territories, possessions, and commonwealths.

(d) Nothing in this part shall authorize or require a carrier to fail to comply with any applicable FAA safety regulation.

(e) The compliance date for the following provisions of this part is June 4, 1990:

§ 382.7 (b)

§ 382.21(c)

§ 382.31(e)

§ 382.33(f)

§ 382.35 (d), (e)

§ 382.37 (b), (c)

§ 382.39 (a) (second sentence of introductory language); (a)(1) and (a)(2), with respect to acquisition of equipment; (a)(3); (b)(3); (b)(4)

§ 382.41 (d), (e)(2), (f)

§ 382.45 (a), (c)

§ 382.47(a)

§ 382.49 (b), (c)

§ 382.65 (a), (b)(2).

(f) The compliance date for the following provisions of this part is August 5, 1990:

§ 382.9

§ 382.23(e)

§ 382.33(d)

§ 382.51

§ 382.53(c).

(g) The compliance date for the following provisions for this part is October 5, 1990:

§ 382.35 (b)(2), (b)(3)

§ 382.41(g), with respect to the acceptance and stowage of batteries requiring hazardous materials packaging, for carriers which, as of March 6, 1990, had a policy of carrying no hazardous materials.

[55 FR 8046, Mar. 6, 1990, as amended at 55 FR 12341, Apr. 3, 1990; 55 FR 23544, June 11, 1990]

### § 382.5 Definitions.

As used in this part—

*Air Carrier* or *carrier* means any citizen of the United States who undertakes, whether directly or indirectly or by a lease or any other arrangement, to engage in air transportation.

*Air carrier airport* means a public, commercial service airport which employs annually 2,500 or more passengers and receives scheduled air service.

*Air transportation* means interstate, overseas, or foreign air transportation, or the transportation of mail by aircraft, as defined in the Federal Aviation Act.

*Department* or *DOT* means the United States Department of Transportation.

*FAA* means the Federal Aviation Administration, an operating administration of the Department.

*Facility* means all or any portion of aircraft, buildings, structures, equipment, roads, walks, parking lots, and any other real or personal property, normally used by passengers or prospective passengers visiting or using the airport, to the extent the carrier exercises control over the selection, design, construction, or alteration of the property.

*Individual with a disability* means any individual who has a physical or mental impairment that, on a permanent or temporary basis, substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(a) *Physical or mental impairment* means:

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory including speech organs, cardio-vascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

The term *physical or mental impairment* includes, but is not limited to, such

diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction, and alcoholism.

(b) *Major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(c) *Has a record of such impairment* means has a history of, or has been classified, or misclassified, as having a mental or physical impairment that substantially limits one or more major life activities.

(d) *Is regarded as having an impairment* means:

(1) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by an air carrier as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits a major life activity only as a result of the attitudes of others toward such an impairment; or

(3) Has none of the impairments set forth in this definition but is treated by an air carrier as having such an impairment.

*Indirect air carrier* means a person not directly involved in the operation of an aircraft who sells air transportation services to the general public other than as an authorized agent of an air carrier.

*Qualified individual with a disability* means a individual with a disability who—

(a) With respect to accompanying or meeting a traveler, use of ground transportation, using terminal facilities, or obtaining information about schedules, fares or policies, takes those actions necessary to avail himself or herself of facilities or services offered by an air carrier to the general public, with reasonable accommodations, as needed, provided by the carrier;

(b) With respect to obtaining a ticket for air transportation on an air carrier, offers, or makes a good faith attempt

to offer, to purchase or otherwise validly to obtain such a ticket;

(c) With respect to obtaining air transportation, or other services or accommodations required by this part:

(1) Purchases or possesses a valid ticket for air transportation on an air carrier and presents himself or herself at the airport for the purpose of traveling on the flight for which the ticket has been purchased or obtained; and

(2) Meets reasonable, nondiscriminatory contract of carriage requirements applicable to all passengers;

*Schedule air service* means any flight scheduled in the current edition of the *Official Airline Guide*, the carrier's published schedule, or the computer reservation system used by the carrier.

#### § 382.7 General prohibition of discrimination.

(a) A carrier shall not, directly or through contractual, licensing, or other arrangements:

(1) Discriminate against any otherwise qualified individual with a disability, by reason of such disability, in the provision of air transportation;

(2) Require a handicapped person to accept special services (including, but not limited to, preboarding) not requested by the passenger;

(3) Exclude a qualified individual with a disability from or deny the person the benefit of any air transportation or related services that are available to other persons, even if there are separate or different services available for handicapped persons except when specifically permitted by another section of this part; or,

(4) Take any action adverse to an individual because of the individual's assertion, on his or her own behalf or through or behalf of others, of rights protected by this part or the Air Carrier Access Act.

(b) If an indirect air carrier provides facilities or services for passengers that are covered for other carriers by sections §§ 382.21–382.55, the indirect air carrier shall do so in a manner consistent with those sections.

**§ 382.9 Assurances from contractors.**

Carriers' contracts with contractors who provide services to passengers, including carriers' agreements of appointment with travel agents (excluding travel agents who are not U.S. citizens who provide services to air carriers outside the United States, its territories and commonwealths), shall include a clause assuring:

- (a) Nondiscrimination on the basis of disability, consistent with this part, by such contractors in activities performed on behalf of the carriers; and
- (b) That contractor employers will comply with directives issued by carrier complaints resolution officials (CROs) under § 382.67.

**§§ 382.11—382.19 [Reserved]**

### Subpart B—Requirements Concerning Facilities

**§ 382.21 Aircraft accessibility.**

(a) The following requirements apply to new aircraft operated under 14 CFR part 121 and ordered by the carrier after the effective date of this part or delivered to the carrier more than two years after the effective date of this part:

- (1)(i) Aircraft with 30 or more passenger seats on which passenger aisle seats have armrests shall have movable aisle armrests on at least one-half of passenger aisle seats.
- (ii) Such armrests are not required to be provided on aisle seats on which a movable armrest is not feasible or aisle seats which a passenger with a mobility impairment is precluded from using by an FAA safety rule.
- (iii) For aircraft equipped with movable aisle armrests as required by this paragraph, carriers shall configure cabins, or establish administrative systems, to ensure that an individuals with mobility impairments or other handicapped persons can readily obtain seating in rows with movable aisle armrests.
- (2) Aircraft with 100 or more passenger seats shall have a priority space in the cabin designated for stowage of at least one folding wheelchair;
- (3) Aircraft with more than one aisle in which lavatories are provided shall include at least one accessible lava-

tory. This lavatory shall permit a qualified individual with a disability to enter, maneuver within as necessary to use all lavatory facilities, and leave, by means of the aircraft's on-board wheelchair. The accessible lavatory shall afford privacy to persons using the on-board wheelchair equivalent to that afforded ambulatory users. The lavatory shall provide door locks, accessible call buttons, grab bars, faucets and other controls, and dispensers usable by qualified individuals with a disability, including wheelchair users and persons with manual impairments;

(4)(i) Aircraft with more than 60 passenger seats having an accessible lavatory, whether or not required to have such a lavatory by paragraph (a)(3) of this section, shall be equipped with an operable on-board wheelchair for the use of passengers.

(ii) The carrier shall ensure that an operable on-board wheelchair is provided for a flight using an aircraft with more than 60 passenger seats on the request (with advance notice as provided in § 382.33(b)(8)) of a qualified individual with a disability who represents to the carrier that he or she is able to use an inaccessible lavatory but is unable to reach the lavatory from a seat without the use of an on-board wheelchair.

(iii) On-board wheelchairs shall include footrests, armrests which are movable or removable, adequate occupant restraint systems, a backrest height that permits assistance to passengers in transferring, structurally sound handles for maneuvering the occupied chair, and wheel locks or another adequate means to prevent chair movement during transfer or turbulence. The chair shall be designed to be compatible with the maneuvering space, aisle width, and seat height of the aircraft on which it is to be used, and to be easily pushed, pulled, and turned in the cabin environment by carrier personnel.

(b)(1) Except as provided in paragraph (b)(2) of this section, aircraft in service on the effective date of this part shall not be required to be retrofitted for the sole purpose of enhancing accessibility.

(2) Each carrier, within two years of the effective date of this part, shall

comply with the provisions of paragraph (a)(4) of this section with respect to all aircraft with more than 60 passenger seats operated under 14 CFR part 121.

(c) Whenever an aircraft operated under 14 CFR part 121 which does not have the accessibility features set forth in paragraph (a) of this section undergoes replacement of cabin interior elements or lavatories, or the replacement of existing seats with newly manufactured seats, the carrier shall meet the requirements of paragraph (a) of this section with respect to the affected feature(s) of the aircraft.

(d) Aircraft operated under 14 CFR part 121 with fewer than 30 passenger seats (with respect to the requirements of paragraph (a)(1) of this section), fewer than 100 passenger seats (with respect to the requirements of paragraph (a)(2) of this section) or 60 or fewer passenger seats (with respect to the requirements of paragraph (a)(4) of this section), and aircraft operated under 14 CFR part 135, shall comply with the requirements of this section to the extent not inconsistent with structural, weight and balance, operational and interior configuration limitations.

(e) Any replacement or refurbishing of the aircraft cabin shall not reduce existing accessibility to a level below that specified in this part.

(f) Carriers shall maintain aircraft accessibility features in proper working order.

**§ 382.23 Airport facilities.**

(a) This section applies to all terminal facilities and services owned, leased, or operated on any basis by an air carrier at a commercial service airport, including parking and ground transportation facilities.

(b) Air carriers shall ensure that the terminal facilities and services subject to this section shall be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Air carriers shall be deemed to comply with this Air Carrier Access Act obligation if they meet requirements applying to places of public accommodation under Department of Justice (DOJ) regulations implementing Title III of the Americans with Disabilities Act (ADA).

(c) The carrier shall ensure that there is an accessible path between the gate and the area from which aircraft are boarded.

(d) Systems of inter-terminal transportation, including, but not limited to, shuttle vehicles and people movers, shall comply with applicable requirements of the Department of Transportation's ADA rule.

(e) The Americans with Disabilities Act Accessibility Guidelines (ADAAGs), including section 10.4 concerning airport facilities, shall be the standard for accessibility under this section.

(f) Contracts or leases between carriers and airport operators concerning the use of airport facilities shall set forth the respective responsibilities of the parties for the provision of accessible facilities and services to individuals with disabilities as required by this part for carriers and applicable section 504 and ADA rules of the Department of Transportation and Department of Justice for airport operators.

[Amdt. 6, 61 FR 56422, Nov. 1, 1996]

**§§ 382.25—382.29 [Reserved]**

**Subpart C—Requirements for Services**

**§ 382.31 Refusal of transportation.**

(a) Unless specifically permitted by a provision of this part, a carrier shall not refuse to provide transportation to a qualified individual with a disability on the basis of his or her disability.

(b) A carrier shall not refuse to provide transportation to a qualified individual with a disability solely because the person's disability results in appearance or involuntary behavior that may offend, annoy, or inconvenience crewmembers or other passengers.

(c) A carrier shall not refuse to provide transportation to qualified individuals with a disability by limiting the number of such persons who are permitted to travel on a given flight.

(d) Carrier personnel, as authorized by 49 U.S.C. 1511, 14 CFR 91.8, or 14 CFR 121.533, may refuse to provide transportation to any passenger on the basis of safety, and may refuse to provide transportation to any passenger whose

carriage would violate the Federal Aviation Regulations. In exercising this authority, carrier personnel shall not discriminate against any qualified individual with a disability on the basis of disability and their actions shall not be inconsistent with the provisions of this part. In the event that such action is inconsistent with the provisions of this part, the carrier shall be subject to remedies provided under § 382.65.

(e) When a carrier refuses to provide transportation to any person on a basis relating to the individual's disability, the carrier shall specify in writing to the person the basis for the refusal, including, where applicable, the reasonable and specific basis for the carrier's opinion that transporting the person would or might be inimical to the safety of the flight. This written explanation shall be provided within 10 calendar days of the refusal of transportation.

#### **§ 382.33 Advance notice requirements.**

(a) Except as provided in paragraph (b) of this section, a carrier shall not require a qualified individual with a disability to provide advance notice of his or her intention to travel or of his or her disability as a condition of receiving transportation or of receiving services or accommodations required by this part.

(b) A carrier may require up to 48 hours advance notice and one-hour advance check-in concerning a qualified individual with a disability who wishes to receive any of the following services, types of equipment, or accommodations:

(1) Medical oxygen for use on board the aircraft, if this service is available on the flight;

(2) Carriage of an incubator, if this service is available on the flight;

(3) Hook-up for a respirator to the aircraft electrical power supply, if this service is available on the flight;

(4) Accommodation for a passenger who must travel in a stretcher, if this service is available on the flight;

(5) Transportation for an electric wheelchair on a flight scheduled to be made with an aircraft with fewer than 60 seats;

(6) Provision by the carrier of hazardous materials packaging for a battery for a wheelchair or other assistive device;

(7) Accommodation for a group of ten or more qualified individuals with a disability, who make reservations and travel as a group; and

(8) Provision of an on-board wheelchair on an aircraft that does not have an accessible lavatory.

(c) If a passenger does not meet advance notice or check-in requirements established by a carrier consistent with this section, the carrier shall nonetheless provide the service, equipment, or accommodation if it can do so by making a reasonable effort, without delaying the flight.

(d) Carriers' reservation and other administrative systems shall ensure that when advance notice is provided by qualified individuals with a disability as provided by this section, the notice is recorded and properly transmitted to operating employees responsible for providing the accommodation concerning which notice was provided.

(e) If the qualified individual with a disability provides the notice required by the carrier for a service under paragraph (b) of this section, the carrier shall ensure that the requested service is provided.

(f) If a qualified individual with a disability provides advance notice to a carrier, and the individual is forced to change to the flight of a different carrier because of the cancellation of the original flight or the substitution of inaccessible equipment, the first carrier shall, to the maximum extent feasible, provide assistance to the second carrier in providing the accommodation requested by the individual from the first carrier.

#### **§ 382.35 Attendants.**

(a) Except as provided in this section, a carrier shall not require that a qualified individual with a disability travel with an attendant as a condition of being provided air transportation. A concern on the part of carrier personnel that an individual with a disability may need to use inaccessible lavatory facilities or may otherwise need extensive special assistance for personal needs which carrier personnel are not

obligated to provide is not a basis on which the carrier may require an attendant.

(b) A carrier may require that a qualified individual with a disability meeting any of the following criteria travel with an attendant as a condition of being provided air transportation, if the carrier determines that an attendant is essential for safety:

(1) A person traveling in a stretcher or incubator. The attendant for such a person must be capable of attending to the passenger's in-flight medical needs;

(2) A person who, because of a mental disability, is unable to comprehend or respond appropriately to safety instructions from carrier personnel, including the safety briefing required by 14 CFR 121.571 (a) (3) and (a)(4) or 14 CFR 135.117(b);

(3) A person with a mobility impairment so severe that the person is unable to assist in his or her own evacuation of the aircraft;

(4) A person who has both severe hearing and severe vision impairments, if the person cannot establish some means of communication with carrier personnel, adequate to permit transmission of the safety briefing required by 14 CFR 121.571(a)(3) and (a)(4) or 14 CFR 135.117(b).

(c) If the carrier determines that a person meeting the criteria of paragraph (b)(2), (b)(3) or (b)(4) of this section must travel with an attendant, contrary to the individual's self-assessment that he or she is capable of traveling independently, the carrier shall not charge for the transportation of the attendant.

(d) If, because there is not a seat available on a flight for an attendant whom the carrier has determined to be necessary, a handicapped person with a confirmed reservation is unable to travel on the flight, the handicapped person shall be eligible for denied boarding compensation under 14 CFR part 250.

(e) For purposes of determining whether a seat is available for an attendant, the attendant shall be deemed to have checked in at the same time as the handicapped person.

**§ 382.37 Seat assignments.**

(a) Carriers shall not exclude any qualified individual with a disability from any seat in an exit row or other location or require that a qualified individual with a disability sit in any particular seat, on the basis of disability, except in order to comply with the requirements of an FAA safety regulation or as provided in this section.

(b) If a person's disability results in involuntary active behavior that would result in the person properly being refused transportation under §382.31, and the safety problem could be mitigated to a degree that would permit the person to be transported consistent with safety if the person is seated in a particular location, the carrier shall offer the person that particular seat location as an alternative to being refused transportation.

(c) If a service animal cannot be accommodated at the seat location of the qualified individual with a disability whom the animal is accompanying (see §382.55(a)(2)), the carrier shall offer the passenger the opportunity to move with the animal to a seat location, if present on the aircraft, where the animal can be accommodated, as an alternative to requiring that the animal travel with checked baggage.

**§ 382.39 Provision of services and equipment.**

Carriers shall ensure that qualified individuals with a disability are provided the following services and equipment:

(a) Carriers shall provide assistance requested by or on behalf of qualified individuals with a disability, or offered by air carrier personnel and accepted by qualified individuals with a disability, in enplaning and deplaning. The delivering carrier shall be responsible for assistance in making flight connections and transportation between gates.

(1) This assistance shall include, as needed, the services personnel and the use of ground wheelchairs, boarding wheelchairs, on-board wheelchairs where provided in accordance with this part, and ramps or mechanical lifts.

(2) Boarding shall be by level entry boarding platforms or accessible passenger lounges, where these means are

available. Where these means are not available, carriers shall use ramps, mechanical lifts, or other suitable devices (not normally used for freight) for enplaning and deplaning qualified individuals with a disability who need them. Such devices shall be maintained in proper working order. In no case shall carrier personnel be required to hand-carry a passenger in order to provide boarding assistance (i.e., directly to pick up the passenger's body in the arms of one or more carrier personnel to effect a level change the passenger needs to enter or leave the aircraft). Requirements for providing boarding assistance to aircraft with 30 or fewer seats are found in § 382.40.

(3) Carriers shall not leave a handicapped passenger unattended in a ground wheelchair, boarding wheelchair, or other device, in which the passenger is not independently mobile, for more than 30 minutes.

(b) Carriers shall provide services within the aircraft cabin as requested by or on behalf of individuals with a disability, or when offered by air carrier personnel and accepted by individuals with a disability as follows:

(1) Assistance in moving to and from seats, as part of the enplaning and deplaning processes;

(2) Assistance in preparation for eating, such as opening packages and identifying food;

(3) If there is an on-board wheelchair on the aircraft, assistance with the use of the on-board wheelchair to enable the person to move to and from a lavatory;

(4) Assistance to a semiambulatory person in moving to and from the lavatory, not involving lifting or carrying the person; or

(5) Assistance in loading and retrieving carry-on items, including mobility aids and other assistive devices stowed on board in accordance with § 382.41.

(c) Carriers are not required to provide extensive special assistance to qualified individuals with a disability. For purposes of this section, extensive special assistance includes the following activities:

(1) Assistance in actual eating;

(2) Assistance within the restroom or assistance at the passenger's seat with elimination functions;

(3) Provision of medical services.

[55 FR 8046, Mar. 6, 1990, as amended by Amdt. 6, 61 FR 56422, 56423, Nov. 1, 1996; 62 FR 17, Jan. 2, 1997]

#### **§ 382.40 Boarding assistance for small aircraft.**

(a) Paragraphs (b) and (c) of this section apply to air carriers conducting passenger operations with aircraft having 19–30 seat capacity at airports with 10,000 or more annual enplanements.

(b) Carriers shall, in cooperation with the airports they serve, provide boarding assistance to individuals with disabilities using mechanical lifts, ramps, or other suitable devices that do not require employees to lift or carry passengers up stairs.

(c) (1) Each carrier shall negotiate in good faith with the airport operator at each airport concerning the acquisition and use of boarding assistance devices. The carrier(s) and the airport operator shall, by no later than September 2, 1997, sign a written agreement allocating responsibility for meeting the boarding assistance requirements of this section between or among the parties. The agreement shall be made available, on request, to representatives of the Department of Transportation.

(2) The agreement shall provide that all actions necessary to ensure accessible boarding for passengers with disabilities are completed as soon as practicable, but no later than December 2, 1998 at large and medium commercial service hub airports (those with 1,200,000 or more annual enplanements); December 2, 1999 for small commercial service hub airports (those with between 250,000 and 1,199,999 annual enplanements); or December 4, 2000 for non-hub commercial service primary airports (those with between 10,000 and 249,999 annual enplanements). All air carriers and airport operators involved are jointly responsible for the timely and complete implementation of the agreement.

(3) Under the agreement, carriers may require that passengers wishing to receive boarding assistance requiring the use of a lift for a flight using a 19–30 seat aircraft check in for the flight



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one hour before the scheduled departure time for the flight. If the passenger checks in after this time, the carrier shall nonetheless provide the boarding assistance by lift if it can do so by making a reasonable effort, without delaying the flight.

(4) Boarding assistance under the agreement is not required in the following situations:

(i) Access to aircraft with a capacity of fewer than 19 or more than 30 seats;

(ii) Access to float planes;

(iii) Access to the following 19-seat capacity aircraft models: the Fairchild Metro, the Jetstream 31, and the Beech 1900 (C and D models);

(iv) Access to any other 19-seat aircraft model determined by the Department of Transportation to be unsuitable for boarding assistance by lift on the basis of a significant risk of serious damage to the aircraft or the presence of internal barriers that preclude passengers who use a boarding or aisle chair to reach a non-exit row seat.

(5) When boarding assistance is not required to be provided under paragraph (c)(4) of this section, or cannot be provided as required by paragraphs (b) and (c) of this section for reasons beyond the control of the parties to the agreement (e.g., because of mechanical problems with a lift), boarding assistance shall be provided by any available means to which the passenger consents, except hand-carrying as defined in § 382.39(a)(2) of this part.

(6) The agreement shall ensure that all lifts and other accessibility equipment are maintained in proper working condition.

(d)(1) The training of carrier personnel required by § 382.61 shall include, for those personnel involved in providing boarding assistance, training to proficiency in the use of the boarding assistance equipment used by the carrier and appropriate boarding assistance procedures that safeguard the safety and dignity of passengers.

(2) Carriers who do not operate aircraft with more than a 19-seat capacity shall ensure that those personnel involved in providing boarding assistance are trained to proficiency in the use of the boarding assistance equipment used by the carrier and appropriate boarding assistance procedures that

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safeguard the safety and dignity of passengers.

[Amdt. 6, 61 FR 56423, Nov. 1, 1996]

### § 382.41 Stowage of personal equipment.

(a) All stowage of qualified handicapped individuals' wheelchairs and other equipment covered by this part in aircraft cabins shall be in accordance with 14 CFR 121.589 and 14 CFR 121.285(c) or 14 CFR 135.87, as applicable.

(b) Carriers shall permit qualified individuals with a disability using personal ventilators/respirators to bring their equipment, including non-spillable batteries that meet the requirements of 49 CFR 173.260(d) and any applicable FAA safety regulations, on board the aircraft and use it.

(c) Carriers shall permit qualified individuals with a disability to stow canes and other assistive devices on board the aircraft in close proximity to their seats, consistent with the requirements of FAA safety regulations for carry-on items.

(d) Carriers shall not, in implementing their carry-on baggage policies, count toward a limit on carry-on items any assistive device brought into the cabin by a qualified individual with a disability.

(e) Carriers shall provide for on-board stowage of passengers' wheelchairs as follows:

(1) Carriers shall permit the stowage of wheelchairs or components of wheelchairs in overhead compartments and under seats, consistent with the requirements of FAA safety regulations for carry-on items.

(2) In aircraft in which a closet or other approved stowage area is provided in the cabin for passengers' carry-on items, of a size that will accommodate a folding wheelchair, the carrier shall designate priority stowage space, as described below, for at least one folding wheelchair in that area. A individual with a disability who takes advantage of a carrier offer of the opportunity to pre-board the aircraft may stow his or her wheelchair in this area, with priority over the carry-on items brought onto the aircraft by other passengers enplaning at the same airport. A individual with a disability

who does not take advantage of a carrier offer of the opportunity to preboard may use the area to stow his or her wheelchair on a first-come, first-served basis along with all other passengers seeking to stow carry-on items in the area.

(3) If an approved stowage area in the cabin is not available for a folding wheelchair, the wheelchair shall be stowed in the cargo compartment.

(f) When passenger compartment stowage is not available, carriers shall provide for the checking and timely return of passengers' wheelchairs and other assistive devices as close as possible to the door of the aircraft, so that passengers may use their own equipment to the extent possible, except where this practice would be inconsistent with DOT regulations governing the transportation of hazardous materials.

(1) At the request of the passenger, the carrier may return wheelchairs or other assistive devices to the passenger at the baggage claim area instead of at the door of the aircraft.

(2) In order to achieve the timely return of wheelchairs, passengers' wheelchairs and other assistive devices shall be among the first items retrieved from the baggage compartment.

(3) Wheelchairs and other assistive devices shall be stowed in the baggage compartment with priority over other cargo and baggage. Where this priority results in passengers' baggage being unable to be carried on the flight, the carrier shall make its best efforts to ensure that the other baggage reaches the passengers' destination within four hours of the scheduled arrival time of the flight.

(g) Where baggage compartment size and aircraft airworthiness considerations do not prohibit doing so, carriers shall accept as baggage battery-powered wheelchairs, including the batteries, consistent with the requirements of DOT regulations on the transportation of hazardous materials (49 CFR parts 172, 173, and 175).

(1) Carriers may require that qualified individuals with a disability wishing to have electric wheelchairs transported on a flight check in one hour before the scheduled departure time for the flight. If such a individual with a

disability checks in after this time, the carrier shall nonetheless carry the wheelchair if it can do so by making a reasonable effort, without delaying the flight.

(2) Whenever feasible, the carrier shall transport electric-powered wheelchairs secured in an upright position, so that batteries need not be separated from the wheelchair in order to comply with DOT hazardous materials rules.

(3) When it is necessary to detach the battery from the wheelchair, carriers shall, upon request, provide packaging for the batteries meeting the requirements of the DOT hazardous materials rules and package the battery. Carriers may refuse to use packaging materials or devices other than those they normally use for this purpose.

(4) Carriers shall not drain batteries.

(5) Individuals with a disability shall be permitted to provide written directions concerning the disassembling and assembling of their wheelchairs.

#### **§ 382.43 Treatment of mobility aids and assistive devices.**

(a) When wheelchairs or other assistive devices are disassembled by the carrier for stowage, the carrier shall reassemble them and ensure their prompt return to the handicapped passenger. Wheelchairs and other assistive devices shall be returned to the passenger in the condition received by the carrier.

(b) With respect to domestic transportation, carriers shall not limit liability for loss, damage, or delay concerning wheelchairs or other mobility aids to any amount less than twice the liability limits established for passengers' luggage under 14 CFR part 254.

(c) Carriers shall not require qualified individuals with a disability to sign waivers of liability for damage to or loss of wheelchairs or other assistive devices.

[55 FR 8046, Mar. 6, 1990, as amended at 55 FR 12342, Apr. 3, 1990]

#### **§ 382.45 Passenger information.**

(a) A carrier shall make available, on request, the following information concerning facilities and services related to the provision of air transportation to qualified individuals with a disability. This information shall pertain to

the type of aircraft and, where feasible, the specific aircraft scheduled for a specific flight:

(1) The location of seats, if any, with movable armrests and any seats which the carrier, consistent with this part, does not make available to qualified individuals with a disability;

(2) Any limitations on the ability of the aircraft to accommodate qualified individuals with disabilities, including limitations on the availability of boarding assistance to the aircraft, with respect to the departure and destination points and any intermediate stops. The carrier shall provide this information to any passenger who states that he or she uses a wheelchair for boarding, even if the passenger does not explicitly request the information.

(3) Any limitations on the availability of storage facilities, in the cabin or in the cargo bay, for mobility aids or other equipment commonly used by handicapped persons;

(4) Whether the aircraft has an accessible lavatory.

(b) The following provisions govern the provision of individual safety briefings to qualified individuals with a disability:

(1) Individual safety briefings shall be conducted for any passenger where required by 14 CFR 121.571 (a)(3) and (a)(4) or 14 CFR 135.117(b);

(2) Carrier personnel may offer an individual briefing to any other passenger;

(3) Individual safety briefings for qualified individuals with a disability shall be conducted as inconspicuously and discreetly as possible;

(4) Carrier personnel shall not require any qualified individual with a disability to demonstrate that he or she has listened to, read, or understood the information presented, except to the extent that carrier personnel impose such a requirement on all passengers with respect to the general safety briefing, and shall not take any action adverse to a qualified individual with a disability on the basis that the person has not "accepted" the briefing.

(c) Each carrier shall ensure that qualified individuals with a disability, including those with vision or hearing impairments, have timely access to information the carrier provides to other

passengers in the terminal or on the aircraft (to the extent that it does not interfere with crewmembers' safety duties as set forth in FAA regulations) including, but not limited to, information concerning ticketing, flight delays, schedule changes, connections, flight check-in, gate assignments, and the checking and claiming of luggage; *Provided*, That persons who are unable to obtain such information from the audio or visual systems used by carriers in airports or on aircraft shall request the information from carrier personnel. Carriers shall also provide information on aircraft changes that will affect the travel of handicapped persons.

(d) Carriers shall have, at each airport they use, a copy of this part and shall make it available for review by handicapped persons on request.

[55 FR 8046, Mar. 6, 1990, as amended by Amdt. 6, 61 FR 56423, Nov. 1, 1996]

**§ 382.47 Accommodations for persons with hearing impairments.**

(a) Each carrier providing scheduled air service, or charter service under section 401 of the Federal Aviation Act, and which makes available telephone reservation and information service available to the public shall make available a telecommunications device for the deaf (TDD) service to enable persons with hearing impairments to make reservations and obtain information. The TDD service shall be available during the same hours as the telephone service for the general public and the response time for answering calls shall be equivalent. Users of the TDD service shall not be subject to charges for a call that exceed those applicable to other users of the telephone information and reservation service.

(b) In aircraft in which safety briefings are presented to passengers on video screens, the carrier shall ensure that the video presentation is accessible to persons with hearing impairments.

(1) Except as provided in paragraph (b)(2) of this section, the carrier shall implement this requirement by using open captioning or an inset for a sign language interpreter as part of the video presentation.

(2) A carrier may use an equivalent non-video alternative to this requirement only if neither open captioning nor a sign language interpreter inset could be placed in the video presentation without so interfering with it as to render it ineffective or would be large enough to be readable.

(3) Carriers shall implement the requirements of this section by substituting captioned video materials for uncaptioned video materials as the uncaptioned materials are replaced in the normal course of the carrier's operations.

**§ 382.49 Security screening of passengers.**

(a) Qualified individuals with a disability shall undergo security screening in the same manner, and be subject to the same security requirements, as other passengers. Possession by a qualified individual with a disability of an aid used for independent travel shall not subject the person or the aid to special screening procedures if the person using the aid clears the security system without activating it. *Provided*, That this paragraph shall not prohibit security personnel from examining a mobility aid or assistive device which, in their judgment, may conceal a weapon or other prohibited item. Security searches of qualified individuals with a disability whose aids activate the security system shall be conducted in the same manner as for other passengers. Private security screenings shall not be required for qualified individuals with a disability to a greater extent, or for any different reason, than for other passengers.

(b) Except as provided in paragraph (c) of this section, if a qualified handicapped person requests a private screening in a timely manner, the carrier shall provide it in time for the passenger to enplane.

(c) If a carrier employs technology that can conduct an appropriate screening of a handicapped passenger without necessitating a physical search of the person, the carrier is not required to provide a private screening.

**§ 382.51 Communicable diseases.**

(a) Except as provided in paragraph (b) of this section, a carrier shall not

take any of the following actions, with respect to a person who is otherwise a qualified individual with a disability, on the basis that the individual has a communicable disease or infection:

(1) Refuse to provide transportation to the person;

(2) Require the person to provide a medical certificate; or

(3) Impose on the person any condition, restriction, or requirement not imposed on other passengers.

(b)(1) The carrier may take the actions listed in paragraph (a) of this section with respect to an individual who has a communicable disease or infection only if the individual's condition poses a direct threat to the health or safety of others.

(2) For purposes of this section, a direct threat means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.

(3) In determining whether an individual poses a direct threat to the health or safety of others, a carrier must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; that the potential harm to the health and safety of others will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk.

(4) In taking actions authorized under this paragraph, carriers shall select the alternative, consistent with the safety and health of other persons, that is least restrictive from the point of view of the passenger with the communicable disease. For example, the carrier shall not refuse to provide transportation to an individual if provision of a medical certificate or reasonable modifications to practices, policies, or procedures will mitigate the risk of communication of the disease to others to an extent that would permit the individual to travel.

(5) If an action authorized under this paragraph results in the postponement of a passenger's travel, the carrier shall permit the passenger to travel at

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a later time (up to 90 days from the date of the postponed travel) at the fare that would have applied to the passenger's originally scheduled trip without penalty or, at the passenger's discretion, provide a refund for any unused flights, including return flights.

(6) Upon the passenger's request, the carrier shall provide to the passenger a written explanation of any action taken under this paragraph within 10 days of the request.

(c) If a qualified individual with a disability with a communicable disease or infection of the kind described in paragraph (b) of this section presents a medical certificate to the carrier, as provided in § 382.53(c)(2), the carrier shall provide transportation to the individual, unless it is not feasible for the carrier to implement the conditions set forth in the medical certificate as necessary to prevent the transmission of the disease or infection to other persons in the normal course of a flight.

[55 FR 8046, Mar. 6, 1990, as amended by Amdt. 6, 61 FR 56423, Nov. 1, 1996]

### § 382.53 Medical certificates.

(a) Except as provided in this section, a carrier shall not require a person who is otherwise a qualified handicapped person to have a medical certificate as a condition for being provided transportation.

(b)(1) A carrier may require a medical certificate for a qualified individual with a disability—

(i) Who is traveling in a stretcher or incubator;

(ii) Who needs medical oxygen during a flight, as provided in 14 CFR 121.574; or

(iii) Whose medical condition is such that there is reasonable doubt that the individual can complete the flight safely, without requiring extraordinary medical assistance during the flight.

(2) For purposes of this paragraph, a medical certificate is a written statement from the passenger's physician saying that the passenger is capable of completing a flight safely, without requiring extraordinary medical assistance during the flight.

(c)(1) If a qualified individual with a disability has a communicable disease or infection of the kind described in

§ 382.51(b), a carrier may require a medical certificate.

(2) For purposes of this paragraph, a medical certificate is a written statement from the passenger's physician saying that the disease or infection would not, under the present conditions in the particular passenger's case, be communicable to other persons during the normal course of a flight. The medical certificate shall state any conditions or precautions that would have to be observed to prevent the transmission of the disease or infection to other persons in the normal course of a flight. It shall be dated within ten days of the date of the flight for which it is presented.

### § 382.55 Miscellaneous provisions.

(a) Carriers shall permit dogs and other service animals used by handicapped persons to accompany the persons on a flight.

(1) Carriers shall accept as evidence that an animal is a service animal identification cards, other written documentation, presence of harnesses or markings on harnesses, tags, or the credible verbal assurances of the qualified individual with a disability using the animal.

(2) Carriers shall permit a service animal to accompany a qualified individual with a disability in any seat in which the person sits, unless the animal obstructs an aisle or other area that must remain unobstructed in order to facilitate an emergency evacuation.

(3) In the event that special information concerning the transportation of animals outside the continental United States is either required to be or is provided by the carrier, the information shall be provided to all passengers traveling with animals outside the continental United States with the carrier, including those traveling with service animals.

(b) Carriers shall not require qualified individuals with a disability to sit on blankets.

(c) Carriers shall not restrict the movements of handicapped persons in terminals or require them to remain in a holding area or other location in order to be provided transportation, to

receive assistance, or for other purposes, or otherwise mandate separate treatment for handicapped persons, except as permitted or required in this part.

**§ 382.57 Charges for accommodations prohibited.**

Carriers shall not impose charges for providing facilities, equipment, or services that are required by this part to be provided to qualified individuals with a disability.

**§ 382.59 [Reserved]**

**Subpart D—Administrative Provisions**

**§ 382.61 Training.**

(a) Each carrier which operates aircraft with more than 19 passenger seats shall provide training, meeting the requirements of this paragraph, for all its personnel who deal with the traveling public, as appropriate to the duties of each employee.

(1) The carrier shall ensure training to proficiency concerning:

(i) The requirements of this part and other DOT or FAA regulations affecting the provision of air travel to handicapped persons; and

(ii) The carrier's procedures, consistent with this part, concerning the provision of air travel to handicapped persons, including the proper and safe operation of any equipment used to accommodate handicapped passengers.

(2) The carrier shall also train such employees with respect to awareness and appropriate responses to handicapped persons, including persons with physical, sensory, mental, and emotional disabilities, including how to distinguish among the differing abilities of individuals with a disability.

(3) The carrier shall consult with organizations representing persons with disabilities in developing its training program and the policies and procedures concerning which carrier personnel are trained.

(4) The carrier shall ensure that personnel required to receive training shall complete the training by the following times:

(i) For crewmembers subject to training required under 14 CFR part 121 or

135, who are employed on the date the carrier's program is established under § 382.63, as part of their next scheduled recurrent training;

(ii) For other personnel employed on the date the carrier's program is established under § 382.63, within 180 days of that date;

(iii) For crewmembers subject to training requirements under 14 CFR part 121 or 135 whose employment in any given position commences after the date the carrier's program is established under § 382.63, before they assume their duties; and

(iv) For other personnel whose employment in any given position commences after the date the carrier's program is established under § 382.63, within 60 days of the date on which they assume their duties.

(5) Each carrier shall ensure that all personnel required to receive training receive refresher training on the matters covered by this section, as appropriate to the duties of each employee, as needed to maintain proficiency.

(6) Each carrier shall provide, or require its contractors to provide, training to the contractors' employees concerning travel by handicapped persons. This training is required only for those contractor employees who deal directly with the traveling public at airports, and it shall be tailored to the employees' functions. Training for contractor employees shall meet the requirements of paragraphs (a)(1) through (a)(5) of this section.

(7) Current employees of each carrier designated as complaints resolution officials, for purposes of § 382.65 of this part, shall receive training concerning the requirements of this part and the duties of a complaints resolution official within 60 days of the effective date of this part. Employees subsequently designated as complaints resolution officers shall receive this training before assuming their duties under § 382.65. All employees performing the complaints resolution official function shall receive annual refresher training concerning their duties and the provisions of this regulation.

(b) Each carrier operating only aircraft with 19 or fewer passenger seats shall provide training for flight crewmembers and appropriate personnel to

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ensure that they are familiar with the matters listed in paragraphs (a)(1) and (a)(2) of this section and comply with the requirements of this part.

**§ 382.63 Carrier programs.**

(a)(1) Each carrier that operates aircraft with more than 19 passenger seats shall establish and implement, within 180 days of the effective date of this part, a written program for carrying out the requirements of this part.

(2) Carriers are not excused from compliance with the provisions of this part during the 180 days before carrier programs are required to be established.

(b) The program shall include the following elements:

(1) The carrier's schedule for training its personnel in compliance with § 382.61;

(2) The carrier's policies and procedures for accommodating handicapped passengers consistent with the requirements of this part.

(c)(1) Major and National carriers (as defined in the DOT publication *Air Carrier Traffic Statistics*), and every U.S. carrier that shares the designator code of a Major or National carrier (as described in 14 CFR 399.88), shall submit their program to the Department for review within 180 days of the effective date of this part.

(2) The Department shall review each carrier's program, which the carrier shall implement without further DOT action at the time it is submitted to the Department.

(3) If the Department determines that any portion of a carrier's plan must be amended, or provisions added or deleted, in order for the carrier to comply with this part, DOT will direct the carrier to make appropriate changes. The carrier shall incorporate these changes into its program and implement them.

(d) Other carriers shall maintain their programs on file, and shall make them available for review by the Department on the Department's request. If, upon such review, the Department determines that any portion of a carrier's plan must be amended, or provisions added or deleted, in order for the carrier to comply with this part, DOT will direct the carrier to make appro-

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priate changes. The carrier shall incorporate these changes into its program and implement them.

**§ 382.65 Compliance procedures.**

(a) Each carrier providing scheduled service shall establish and implement a complaint resolution mechanism, including designating one or more complaints resolution official(s) (CRO) to be available at each airport which the carrier serves.

(1) The carrier shall make a CRO available to any person who complains of alleged violations of this part during all times the carrier is operating at the airport.

(2) The carrier may make the CRO available via telephone, at no cost to the passenger, if the CRO is not present in person at the airport at the time of the complaint. If a telephone link to the CRO is used, TDD service shall be available so that persons with hearing impairments may readily communicate with the CRO.

(3) Each CRO shall be thoroughly familiar with the requirements of this part and the carrier's procedures with respect to handicapped passengers.

(4) Each CRO shall have the authority to make dispositive resolution of complaints on behalf of the carrier.

(5) When a complaint is made to a CRO, the CRO shall promptly take dispositive action as follows:

(i) If the complaint is made to a CRO before the action or proposed action of carrier personnel has resulted in a violation of a provision of this part, the CRO shall take or direct other carrier personnel to take action, as necessary, to ensure compliance with this part. *Provided*, That the CRO is not required to be given authority to countermand a decision of the pilot-in-command of an aircraft based on safety.

(ii) If an alleged violation of a provision of this part has already occurred, and the CRO agrees that a violation has occurred, the CRO shall provide to the complainant a written statement setting forth a summary of the facts and what steps, if any, the carrier proposes to take in response to the violation.

(iii) If the CRO determines that the carrier's action does not violate a provision of this part, the CRO shall provide to the complainant a written statement including a summary of the facts and the reasons, under this part, for the determination.

(iv) The statements required to be provided in paragraph (a)(5) of this section shall inform the complainant of his or her right to pursue DOT enforcement action under this section. This statement shall be provided in person to the complainant at the airport if possible; otherwise, it shall be forwarded to the complainant within 10 calendar days of the complaint.

(b) Each carrier shall establish a procedure for resolving written complaints alleging violation of the provisions of this part.

(1) A carrier is not required to respond to a complaint postmarked more than 45 days after the date of the alleged violation.

(2) A written complaint shall state whether the complainant has contacted a CRO in the matter, the name of the CRO and the date of the contact, if available, and include any written response received from the CRO.

(3) The carrier shall make a dispositive written response to a written complaint alleging a violation of a provision of this part within 30 days of its receipt.

(i) If the carrier agrees that a violation has occurred, the carrier shall provide to the complainant a written statement setting forth a summary of the facts and what steps, if any, the carrier proposes to take in response to the violation.

(ii) If the carrier denies that a violation has occurred, the response shall include a summary of the facts and the carrier's reasons, under this part, for the determination.

(iii) The statements required to be provided in paragraph (b)(3) of this section shall inform the complainant of his or her right to pursue DOT enforcement action under this section.

(c) Any person believing that a carrier has violated any provision of this

part may contact the following office for assistance: Department of Transportation, Office of Consumer Affairs, 400 7th Street, SW., Washington, DC 20590, (202) 366-2220.

(d) Any person believing that a carrier has violated any provision of this part may file a formal complaint under the applicable procedures of 14 CFR part 302.

## PART 383—CIVIL PENALTIES

Sec.

383.1 Basis and purpose.

383.2 Amount of penalty.

AUTHORITY: 28 U.S.C. section 2461 note.

SOURCE: Docket No. OST-97-2116, 62 FR 6720, Feb. 13, 1997, unless otherwise noted.

### § 383.1 Basis and purpose.

(a) *Basis.* This part implements the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104-134, section 31001). The Debt Collection Improvement Act of 1996 (Act) requires each agency head to adjust by regulation each civil monetary penalty provided by law by the inflation adjustment described under section 5 of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

(b) *Purpose.* This part increases the civil penalty liability amount listed under subsection (a)(1) of section 46301 of Title 49 of the United States Code.

### § 383.2 Amount of penalty.

A person is liable to the United States Government for a civil penalty of not more than \$1,100 for violations covered by this chapter and listed under subsection (a)(1) of section 46301 of Title 49 of the United States Code.<sup>1</sup>

<sup>1</sup>As adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-140), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104-143, section 31001).